IN THE

SUPREME COURT

OF THE UNITED STATES

October Term, 1972
No. 72-647

STATE OF CALIFORNIA,

Petitioner,

v.

LESLIE FOREMAN,

Respondent.

ON WRIT OF CERTIORARI TO THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

PETITIONER'S REPLY BRIEF

THE HOLDING OF PEOPLE v. SUPERIOR COURT (HAWKINS) WAS NOT BASED UPON AN INDEPENDENT STATE GROUND

Respondent, apparently seeking to avoid a decision on the merits, urges that this Court deny certiorari solely on the basis that the California Supreme Court's decision in People v. Superior Court (Hawkins), 6 Cal.3d 757, rests upon two independant state grounds: a state constitutional provision prohibiting unreasonable searches and seizures (California Constitution, Article 1, Section 19) and a state statute commonly known as an "implied

consent law" (Cal. Vehicle Code, section 13353). For the reasons set forth herein, the petitioner believes that no support, other than respondent's strained construction, for this position can be found in the record herein and that, indeed, the record undeniably establishes that the California Supreme Court's decision which compelled the suppression of the results of respondent's blood alcohol test was grounded upon that court's erroneous interpretations of the federal constitution and of this Court's decision in Schmerber v. California, 384 U.S. 757.

Turning first to the question of whether the holding in People v. Superior Court (Hawkins) was based upon California's constitutional provision relating to unreasonable searches and seizures, it should be noted that the respondent herein does not rely upon any language in the opinion itself but rather upon the historical fact that California adopted the exclusionary rule before it was imposed upon the states by this Court, since People v. Cahan, 44 Cal.2d 434 (1955), preceded Mapp v. Ohio, 367 U.S. 643 (1961). (See Respondent's Opposition, pages 4-5.) The tenor of this

argument, however, would preclude this Court from reviewing any search and seizure decision by a California court decided adverse to the prosecution since all such California decisions could be deemed grounded upon the California Constitution.

However, contrary to the analysis urged by respondent the California Supreme Court expressly held in People v. Superior Court (Hawkins) that it was deciding a question of solely federal constitutional law since the California court stated as follows:

> ". . .They [the people] contend, however, that the taking of a blood sample in a medically approved manner but without the consent of the subject is not violative of his right to be secure against unreasonable searches and seizures under the Fourth and Fourteenth Amendments to the United States Constitution where there is probable cause to arrest at the time the sample is taken, even though the taking of the sample is not pursuant to a search warrant or incident to an arrest. We disagree. Accordingly we deny the People's petition for the writ." (6 Cal.3d at 761.)

Furthermore, the California Supreme Court made it clear that it relied upon the decisions of the United States Supreme Court[1] by stating as follows:

> "The People favor us with no authority supportive of their startling proposition that in this context a lawful arrest is but a mere formality. Indeed this proposition runs directly counter to the law on search and seizure developed by the United States Supreme Court."
> (6 Cal.3d at 762.)

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1. The reference in People v. Superior Court (Hawkins) to People v. Duroncelay, 48 Cal.2d 766, cannot be deemed to provide an adequate state ground since the court in that case held there was no constitutional violation. Thus citation of Duroncelay in no way can be deemed indicative of a violation of a state constitutional provision since Duroncelay itself involved no such violation.

Turning now to the contention that the California Supreme Court's reference to the implied consent law can be deemed an adequate independent state ground for upholding the decision herein we note that that law (Vehicle Code section 13353) does not relate to the admissibility of evidence but merely to the procedural framework within which a driver's license can be revoked. As noted by Justice Burke, in his dissent in People v. Superior Court (Hawkins):

> "The implied consent law (Veh. Code, § 13353) by its terms is inapplicable in the absence of an arrest. However, in enacting this law the Legislature did not intend to preempt the field of chemical sobriety tests by complete statutory regulation, and the admissibility of blood alcohol tests under established case law is not affected by the cited section. (See People v. Wren, 271 Cal.App.2d 788, 791-792 [76 Cal.Rptr. 673]; People v. Fite, 267 Cal.App.2d 685, 687-691 [73 Cal.Rptr. 666].)" (6 Cal.3d at 769.)[3]

3. The cases cited by Justice Burke were not among those disapproved in the majority opinion. See 6 Cal.3d at 765 n. 7.

Since, as explained above, the implied consent law was not directly apposite to the issue of admissibility of evidence, the California Supreme Court considered the legislative purpose underlying this statute only as "instructive" (6 Cal.3d at 764), and not as controlling. Thus the statute in no way can be deemed dispositive of the issue considered in People v. Superior Court (Hawkins).

CONCLUSION

Respondent makes no argument supporting the rationale of People v. Superior Court (Hawkins), but instead seeks to cloak that decision from further scrutiny under the mantle of purported independent state grounds. While justice may be blind, she need not be perverted. Certiorari should be granted.

Respectfully submitted,

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